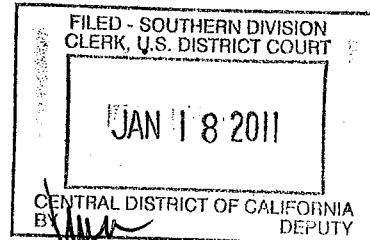


1. James Davis Bennett, Pro Se
FCI Safford
2. Federal Correctional Institution
P.O. Box 9000
3. Safford, AZ 85548



UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF CALIFORNIA

9. UNITED STATES OF AMERICA,) CASE NO. SA CR 03-25(B)AHS
10. Plaintiff,)
11. vs.) DEFENDANT'S MOTION TO CORRECT
12. JAMES DAVIS BENNETT,) THE COURT'S JUDGMENT AND
13. Defendant.) PROBATION/COMMITMENT ORDER AND
14.) THE PROBATION OFFICER'S
) PRESENTENCE REPORT; FRCRP'S
) RULE 36

15. 1. Rule 36 of the Federal Rules of Criminal Procedures
16. provides for the correction of clerical errors which occur
17. and are identified within the Court's Records.

18. 2. While the general rule is that the records and decrees
19. of the court cannot be altered after the term, there is a
20. well-recognized exception in the case of mere clerical
21. errors. United States vs Kaye, 739 F.2d 488, 491(9th Cir.
22. 1984 quoting Rupinski v. United States, 4 F.2d 17, 18(6th Cir.
 1925)).

24. 3. In the case before the Court, we clearly have three
25. clerical errors which appear on the face of the Court's
26. Judgment and Probation/Commitment Order in addition to those
27. within the Probation Officer's Presentence Report which
 coincide with the Court's order.

1. 4. The Probation/Commitment Order clearly makes reference
2. to a Second Superseding Indictment as support for the order
3. and its directives (exhibit A). This is impossible because the
4. record transcripts are unambiguous and absolutely prove that
5. the Court never intended to nor did it ever submit the Second
6. Superseding Indictment for jury deliberations. The following
7. colloquy from the December 15, 2005 transcripts on page 59,
8. lines 3 through 19 proves it was never Judge Alicemarie H.
9. Stotler's intention to present the Second Superseding Indict-
10. ment for jury deliberations:

11. **Judge Stotler:** All right. Let's take a look at this verdict
form that came back to us that has the counts grouped one
12. to four, five to ten and then count twelve, the general ver-
dict, which I know defendant's objection is preserved, too.
13. Anything else that the parties want to add about this verdict?
I'm about to part with in and give it to the clerk. (pause.)
14. The Clerk simply points out that you are referencing a Second
Superseding Indictment that is not going to be before the
15. jury. I have modified the jury instructions to make it clear
that when we reference the Second--when we say "Indictment,"
16. we are referencing the Second Superseding Indictment, but that
is not what is actually going to be in front of the jury...
17. Mr. Sagel, was there anything you wanted to add?(exhibit A
page 60, line 1).

18. **US Attorney Sagel:** No. Actually, your courtroom deputy[clerk]
makes a good point. I would propose everywhere I had it as
19. "Second Superseding Indictment," I added the word "Trial."
(exhibit A page 60, lines 2-5)

20. **Judge Stotler:** No, you are not going to do that. I'm not go-
ing to have a jury returning verdicts on some nonexistent
document. There is no such thing as a Trial Indictment.
(exhibit A page 60, lines 6-10)

21. The next colloquy from the January 4, 2006 transcripts on
22. page 3, lines 3-11 proves that Judge Stotler submitted the
23. Trial Indictment for jury deliberations instead of the Second
24. Superseding Indictment as is represented in her Judgment and
25. Probation/Commitment Order as well as the Probation Officer's
26. Presenting Report:

1. Judge Stotler: We are resuming in the matter United States
2. versus Bennett. We have all jurors, Defendant, counsel. An we
3. resume the instruction of the jury. And members of the jury,
I do assure you that a copy of my instructions will be suppled
4. to you in the jury room, what we covered yesterday and
what we cover today. The **Second Superseding Indictment**
referred--excuse me, submitted to you as the **Trial indictment**
5. ...
...
5. (exhibit A)

6. 5. The above proves that Judge Stotler's Judgment and
7. Probation/Commitment Order has a clerical error because it
is supported by the **Second Superseding Indictment** instead of
8. the **Trial Indictment** which was used by the jury for its de-
9. liberations. We herein request that this is corrected in both
10. the Judgment Order as well as the Presentencing Report prior
11. to resentencing on January 21, 2011.

12. 6. Also, the Probation/Commitment Order clearly identif-
13. ies Chase Manhattan as the victim in Count of Conviction One
14. and Equicredit as the victim in Count of Conviction Two
15. (exhibit B). This too is absolutely impossible because, as
16. exhibit B clearly proves, the Grand Jury alleged that in
17. count one the crime victim was CIT Group and in count two the
18. crime victim was Mortgage Portfolio Services. We would also
19. request that this is corrected in both the Judgment Order as
20. well as the Presentencing Report prior to resentencing on
21. January 21, 2011.

22. 7. Finally, Probation Officer-Wendy Shorr-stated "Infor-
23. mation pertinent to the offense was obtained from the **Indict-**
24. **ment**; the investigative reports of the Federal Bureau of In-
25. vestigation(FBI) and statements made by the Assistant United
26. States Attorney(AUSA), and case agent(CA)." (see Presentence
27. Report paragraph 15).

28. //

1. 8. The **Indictment** referenced by Wendy Shorr-Probation
2. Officer who prepared the Presentencing Report-is inconsistent
3. with the **Second Superseding Indictment** which Ms Shorr claims
4. to have extracted her information because in the report's
5. paragraphs 44-45 she lists some 32 victims when the **Second**
6. **Superseding Indictment** only lists 11. We would also request
7. that this is corrected in the Presentencing Report prior to
8. resentencing on January 21, 2011.

9. The above requests are consistent with U.S. Sentencing
10. Guidelines Manual § 6A1.3(a); therefore, this motion seeks
11. to have the Probation's investigation (Rule 32(c)(1)) complete
12. and the Court's clerical errors resolved by the January 21,
13. 2011 hearing date.

Dated this 4th day of January 2011,

By: James Davis Bennett
P.O. Box 675733
Rancho Santa Fe, Ca. 92067

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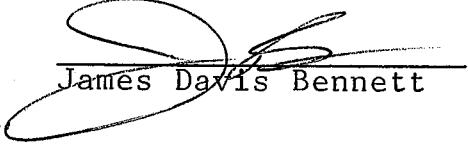
CERTIFICATE OF SERVICE

CASE NAME: United States of America vs James Davis Bennett

CASE NUMBER: SA CR 03-25(B)AHS

I certify that I've served the Defendant's Motion to Correct the Court's Judgment and Probation/Commitment Order on the parties listed below in a manner described:

<u>PARTY SERVED</u>	<u>METHOD OF SERVICE</u>	<u>DATE SERVED</u>
Attn: Brett A. Sagel US Attorney's Office 411 West Fourth Street #8000 Santa Ana, Ca. 92701	U.S. Mail	1-10-2011
Attn: Wendy Shore/Supervisor United States Probation Dept. 411 West Fourth Street Santa Ana, Ca 92701	U.S. Mail	1-10-2011


James Davis Bennett

1-10-2011

Date

EXHIBIT A

UNITED STATES OF AMERICA vs.

Docket No. SA CR 03-25(B)-AHS

Defendant JAMES DAVIS BENNETT

Social Security No. 7 5 8 4

James Butler Bennett; Jim Bennett;
James Bennet, Jr.; James Butler
Bennet; James Butler; Ralph Leon
James Bennett; James David Bennett;
James Davis Bennet; James Brown;
John Butler

(Last 4 digits)

akas:

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH DAY YEAR
OCT. 06 2006

COUNSEL WITH COUNSEL

In Pro Se

(Name of Counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea.

NOLO
CONTENDERE

NOT
GUILTY

FINDING

There being a finding/verdict of GUILTY, defendant has been convicted as charged of the offense(s) of:

Wire Fraud, Aiding and Abetting in violation of 18 USC §§ 1343, 2(b) as charged in Counts 1 through 4 of the Second Superseding Indictment; Bank Fraud, Aiding and Abetting in violation of 18 USC §§ 1344, 2(b) as charged in Counts 5 through 10 of the Second Superseding Indictment

JUDGMENT
AND PROB/
COMM
ORDER

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of:

One hundred and twenty-one (121) months on Counts 1-10 of the Second Superseding Indictment. This term consists of sixty (60) months on each of Counts 1-4 and one hundred and twenty-one (121) months on each of Counts 5-10 of the Second Superseding Indictment, all to be served concurrently.

IT IS FURTHER ORDERED that the defendant shall pay to the United States a special assessment of \$1,000.00, which is due immediately.

IT IS FURTHER ORDERED that the defendant shall pay restitution in the total amount of \$751,050.00 pursuant to 18 U.S.C. § 3663A. The amount of restitution ordered shall be paid forthwith as follows:

<u>Victim</u>	<u>Amount</u>	<u>Count of Conviction</u>
Chase Manhattan (CIT Group)	\$ 90,000.00	Count 1
Equicredit A Division of Bank of America	\$ 88,750.00	Count 2
Flagstar Bank	\$493,014.00	Counts 5, 6, 7
Greenpoint Mortgage	\$ 79,285.00	Count 3

1 GOVERNMENT'S ARGUMENT REGARDING COUNT TWELVE, THE THEORIES
2 WE SHOULD BE PERMITTED TO ARGUE.

3 THE COURT: ALL RIGHT. LET'S TAKE A LOOK AT THIS
4 VERDICT FORM THAT CAME BACK TO US THAT HAS THE COUNTS
5 GROUPED ONE TO FOUR, FIVE TO TEN AND THEN COUNT TWELVE, THE
6 GENERAL VERDICT, WHICH I KNOW DEFENDANT'S OBJECTION IS
7 PRESERVED, TOO.

8 ANYTHING ELSE THAT THE PARTIES WANT TO ADD ABOUT
9 THIS VERDICT?

10 I'M ABOUT TO PART WITH IT AND GIVE IT TO THE
11 CLERK.

12 (PAUSE.)

13 THE COURT: THE CLERK SIMPLY POINTS OUT THAT YOU
14 ARE REFERENCING A SECOND SUPERSEDING INDICTMENT THAT IS NOT
15 GOING TO BE BEFORE THE JURY. I HAVE MODIFIED THE JURY
16 INSTRUCTIONS TO MAKE IT CLEAR THAT WHEN WE REFERENCE THE
17 SECOND - WHEN WE SAY "INDICTMENT," WE ARE REFERENCING THE
18 SECOND SUPERSEDING INDICTMENT, BUT THAT IS NOT WHAT IS
19 ACTUALLY GOING TO BE IN FRONT OF THE JURY. I DON'T KNOW IF
20 THAT'S A PROBLEM OR NOT. BUT OTHER THAN THAT, HOW ABOUT THE
21 VERDICT FORM WITH DEFENDANT'S SIDE?

22 ANYTHING ELSE TO BE ADDED BY WAY OF OBJECTION TO
23 THIS CURRENT VERSION?

24 MR. MEZA: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU.

1 MR. SAGEL, WAS THERE ANYTHING YOU WANTED TO ADD?

2 MR. SAGEL: NO. ACTUALLY, YOUR COURTROOM DEPUTY
3 MAKES A GOOD POINT. I WOULD PROPOSE EVERYWHERE WHERE I HAD
4 IT AS "SECOND SUPERSEDING INDICTMENT," I ADDED THE WORD
5 "TRIAL."

6 THE COURT: NO, YOU ARE NOT GOING TO DO THAT. I'M
7 NOT GOING TO HAVE A JURY RETURNING VERDICTS ON SOME
8 NONEXISTENT DOCUMENT. THERE IS NO SUCH THING AS A TRIAL
9 INDICTMENT. SO YOU CAN EITHER HAVE YOUR DEMONSTRATIVE TRIAL
10 INDICTMENT. I'LL CALL IT A TRIAL EXHIBIT OF THE SECOND
11 SUPERSEDING INDICTMENT. I DON'T CARE WHAT YOU WANT TO DO.

12 MR. SAGEL: THEN, I'M A LITTLE CONFUSED. ARE YOU
13 IN YOUR INSTRUCTIONS -- AND I JUST SAW IT IN YOUR TENTATIVE.

14 ARE YOU USING THE WORD "SECOND SUPERSEDING
15 INDICTMENT"?

16 THE COURT: ONLY ONCE.

17 MR. SAGEL: OKAY. I THOUGHT IT WAS SAYING YOU
18 WERE REPLACING THAT ONE. IF THAT'S THE CASE, THEN I'M FINE
19 WITH IT.

20 THE COURT: NO. IN THE FIFTH INSTRUCTION PROPOSED
21 BY THE GOVERNMENT, I'M JUST MAKING IT CLEAR THAT THE SECOND
22 SUPERSEDING INDICTMENT REFERRED TO AS "INDICTMENT IN THESE
23 INSTRUCTIONS" -- AND THEN I DON'T HAVE TO GO THROUGH SECOND
24 SUPERSEDING INDICTMENT EVERY TIME I SAY THE WORD
25 "INDICTMENT" IN THE JURY INSTRUCTIONS.

DATES 1/4/06

3

1 SANTA ANA, CALIFORNIA; WEDNESDAY, JANUARY 4, 2006; 9:00 A.M.
2

-000-

3 THE COURT: WE ARE RESUMING IN THE MATTER UNITED
4 STATES VERSUS BENNETT.

5 WE HAVE ALL JURORS, DEFENDANT, COUNSEL. AND WE
6 RESUME THE INSTRUCTION OF THE JURY.

7 AND MEMBERS OF THE JURY, I DO ASSURE YOU THAT A
8 COPY OF MY INSTRUCTIONS WILL BE SUPPLIED TO YOU IN THE JURY
9 ROOM, WHAT WE COVERED YESTERDAY AND WHAT WE COVER TODAY.

Dates
DTLW → 10 THE SECOND SUPERSEDING INDICTMENT REFERRED --
11 EXCUSE ME, SUBMITTED TO YOU AS THE TRIAL INDICTMENT AND
12 REFERRED TO IN MY INSTRUCTIONS AS THE INDICTMENT CHARGES
13 THAT THE OFFENSES ALLEGED WERE COMMITTED ON OR ABOUT A
14 CERTAIN DATE. ALTHOUGH IT IS NECESSARY FOR THE GOVERNMENT
15 TO PROVE BEYOND A REASONABLE DOUBT THAT THE OFFENSES WERE
16 COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED IN THE
17 INDICTMENT, IT IS NOT NECESSARY FOR THE GOVERNMENT TO PROVE
18 THAT THE OFFENSE WAS COMMITTED PRECISELY ON THE DATE
19 CHARGED.

20 THE EVIDENCE IN WHICH YOU ARE TO DECIDE WHAT THE
21 FACTS ARE CONSISTS OF THE SWORN TESTIMONY OF ANY WITNESS,
22 THE EXHIBITS WHICH HAVE BEEN RECEIVED INTO EVIDENCE AND ANY
23 FACTS AS TO WHICH ALL THE LAWYERS MAY HAVE STIPULATED.

24 SOME EVIDENCE DURING TRIAL MAY HAVE BEEN ADMITTED
25 FOR A LIMITED PURPOSE ONLY. IF I INSTRUCTED YOU THAT AN

DEBORAH D. PARKER, U.S. COURT REPORTER

EXHIBIT B

1 schemers received fees, commissions and profits.

2 8. Within months of the resale of the residential
3 properties, the straw buyers typically defaulted on the loan
4 payments, leaving mortgage lenders with losses in excess of
5 \$1,000,000.

THE WIRINGS

7 9. On or about the dates set forth below, in the Central
8 District of California and elsewhere, for the purpose of
9 executing the above-described scheme to defraud and attempting to
10 do so, Defendant BENNETT, Rogers, Simon, Ibarra, Garcia, and
11 others caused to be transmitted in interstate commerce by wire
12 communications the following wire transfers from mortgage
13 lenders' accounts outside California to title insurance company
14 and escrow accounts in California.

15 Count Date Funds Wired

16 One 7/27/99 The CIT Group's \$270,000 mortgage loan for
17 the purchase of 2612 Griffith Avenue, Los
18 Angeles, California

19 Two 10/14/99 Mortgage Portfolio Services' \$233,750
20 mortgage loan for the purchase of 760 East
21 43rd Place, Los Angeles, California

22 Three 3/1/00 Greenpoint Mortgage Funding, Inc.'s \$225,250
23 mortgage loan for the purchase of 615 West
24 Imperial Highway, Los Angeles, California

5 Four 2/27/01 Laguna Capital Mortgage Corporation's
6 \$248,000 mortgage loan for the purchase of
7 860 Cerritos Avenue, Long Beach, California

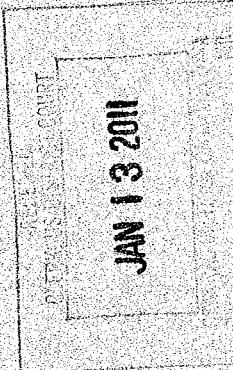


UNIVERSITY MAIL

James Davis Bennett/Reg#32589-112
FCI Safford
Federal Correctional Institution
P.O. Box 9000
Safford, AZ 85548



7009 1680 0000 3702 6353



↔ 32589-112 ↔
District Court Judge
Attn: Audrey Collins
312 North Spring Street
Los Angeles, CA - 90012
United States